

## TITLE 327 WATER POLLUTION CONTROL BOARD

### LSA Document #05-218(WPCB)

#### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from May 1, 2006, through May 30, 2006, on IDEM's draft rule language. IDEM received a comment letter from the following party by the comment period deadline:

City of Indianapolis (INDPLS)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The City of Indianapolis strongly supports this rulemaking to establish the CSO wet weather limited use designation as a subcategory of the recreational use designation within the State of Indiana's water quality standards. This rulemaking is consistent with the intent of the federal and state CSO policies that promote the review and revision of water quality standards in conjunction with Long Term Control Plan planning and implementation. This rulemaking is a major step in providing municipalities all across Indiana with the means to make significant improvements to the quality of the waters of the state by removing the threat of chronic noncompliance even when LTCPs are fully implemented. (INDPLS)

*Response:* IDEM agrees that this rulemaking provides an important option to communities as they work to eliminate combined sewer overflows.

*Comment:* The second notice of comment period contains a statement that the concept of a CSO wet weather limited use subcategory of the recreational use designation is not explicitly identified in federal law. The federal law does grant states the authority to define designated uses for their waterways, including subcategories of uses. U.S. EPA's "CSO Control Policy" (April 1994) and "Combined Sewer Overflows: Guidance for Long Term Control Plan" (September 1995) both discuss the need for the review and appropriate revision of water quality standards in conjunction with CSO planning. More recently, U.S. EPA's "Guidance: Coordinating CSO Long Term Planning with Water Quality Standards Reviews" (July 2001) noted several options for waterways where a state has demonstrated through a UAA that primary contact recreation is not feasible at all times, including a CSO subcategory of the recreational use. In order to avoid misunderstanding among those reading the rule, federal guidance and policy authorizing the subcategory approach should be noted in the rulemaking. (INDPLS)

*Response:* IDEM agrees that all interested persons should have access to as much information as possible in this complex area of the law. The statement regarding what is identified in federal law goes to the issue of fiscal impacts of rules. IDEM is statutorily required to identify each element of a rule that is either not required under federal law or is more stringent than federal law. IDEM agrees that a more complete explanation is necessary to avoid confusion by those reading the rulemaking documents.

*Comment:* The draft rule needs clarification regarding the timing of the LTCP development, approval, and implementation and the corresponding UAA development and

approval in order for the waterbody to be granted the CSO wet weather limited use subcategory designation. According to the SEA 620 legislation passed in 2005, the NPDES permit holder may develop the LTCP and UAA concurrently and seek approval for both concurrently. Once the UAA is approved, the state must begin the rulemaking under IC 13-14-9 to amend the designated use to a CSO wet weather limited use designation. The intent of this rulemaking is to prescribe that the UAA can be approved at any time before the LTCP is fully implemented provided that the LTCP is approved. However, at 327 IAC 2-1-3.1, the draft rule language appears somewhat confusing because it does not explicitly outline the approval process for the UAA. 327 IAC 2-1-3.1(b) could be construed that the UAA approval would not be granted until full LTCP implementation is accomplished while the rule language at 327 IAC 2-1-3.1(d) implies that the UAA can be approved prior to full implementation and can be approved concurrently with the LTCP approval. The City of Indianapolis strongly endorses the interpretation that the UAA and LTCP can be concurrently approved and believes it is the interpretation that is consistent with the language of SEA 620. (INDPLS)

*Response:* It was not the intent of the rule to indicate that a UAA may not be approved until full implementation of the LTCP. IC 13-18-3-2.3 requires IDEM to review a UAA concurrently with a LTCP. The draft rule language will be amended to reflect this clarification.